

**ORIGINAL**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
)  
)

Amendment of the Commission's Rules )  
Regarding Installment Payment Financing )  
For Personal Communications Services )  
(PCS) Licensees )  
)

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WT Docket No. 97-82/

To: The Commission

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REPLY COMMENTS OF OPM AUCTION CO.

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David D. Lasier  
CEO and Chairman  
6120 Windward Parkway  
Suite 200  
Alpharetta, GA 30005  
(678) 366-9660

June 30, 2000

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## **SUMMARY**

OPM Auction Co. (“OPM”) opposes the Commission’s proposal to reconfigure each 30 MHz C Block license into three 10 MHz blocks and to remove eligibility restrictions for certain of those and other licenses. Even if a DE could bid successfully against a large, entrenched carrier and obtain a 10 MHz block, the record is replete with evidence that 10 MHz would be insufficient to develop a robust system capable of providing both voice and data services.

OPM also opposes the Commission’s proposal to eliminate eligibility requirements for C and F Block licenses offered in the upcoming auction. OPM, as well as numerous other commenters, has emphasized that eliminating the eligibility restrictions frustrates the purpose of section 309(j) of the Communications Act of 1934, as amended (“the Act”), by foreclosing designated entities (“DEs”) from having any meaningful opportunity to compete for spectrum. No commenter has provided a sufficient justification to adopt the Commission’s proposals and thus eviscerate section 309(j) of the Act and the Commission’s rules. Instead, commenters supporting the Commission’s proposals erroneously highlight the bankruptcies and related problems of a small number of DEs – problems that the Commission corrected by eliminating the installment payment plan – while ignoring the numerous DEs that already are providing desirable services over spectrum purchased at previous auctions.

OPM recommends that the Commission take the following measures:

- The Commission must maintain its current eligibility rules and limit participation in the upcoming auction to qualified DEs.
- The Commission must not reconfigure each 30 MHz spectrum block into three 10 MHz blocks. If the Commission reconfigures the spectrum, it should create spectrum blocks of 20 MHz and 10 MHz, not three 10 MHz blocks. In the alternative, the Commission must adopt a combinatorial

bidding system to preserve a DE's ability to obtain sufficient spectrum to build out a viable network.

- If the Commission eliminates eligibility requirements, it must raise bidding credits such that DEs realistically can compete with large, established carriers.
- The Commission should maintain the license and spectrum caps.
- The Commission should eliminate the grandfathering provisions.

These measures would preserve the ability of a DE to have meaningful participation in the marketplace in accordance with section 309(j) of the Act.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**In the Matter of**

**Amendment of the Commission's Rules  
Regarding Installment Payment Financing  
For Personal Communications Services  
(PCS) Licensees**

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**WT Docket No. 97-82**

**REPLY COMMENTS OF OPM AUCTION CO.**

OPM Auction Co. ("OPM") hereby replies to the comments filed in the above-captioned proceeding.<sup>1</sup> OPM was a successful participant in the Commission's most recent March 1999 C and F Block reauction, and is currently in the process of establishing wireless networks in West Virginia, Illinois, and the U.S. Virgin Islands using six C Block licenses it received following that reauction. As a qualified Designated Entity ("DE") pursuant to section 24.709 of the Commission's rules, OPM intends to participate in the upcoming C and F Block reauction, which the Commission recently has rescheduled for November 29, 2000. As discussed below, OPM opposes the Commission's tentative conclusion to reconfigure each 30 MHz C Block license into three 10 MHz C Block licenses and to remove eligibility restrictions for certain of these newly-configured licenses. OPM has serious concerns that the cumulative

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<sup>1</sup> See *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Further Notice of Proposed Rulemaking*, WT Docket No. 97-82, FCC 00-197 (June 7, 2000).

effect of these and other of the Commission's tentative conclusions would be to eradicate any chance DEs might have to engage in meaningful participation in the auction and ultimately, in the marketplace.

## **INTRODUCTION**

OPM reiterates its opposition to the Commission's proposal to eliminate eligibility restrictions for any of the available licenses such that all interested parties, including large, established carriers, could participate in the upcoming auction. The record demonstrates that DEs are using the spectrum purchased at previous auctions to provide desirable services to consumers. In many instances, these services are provided in underserved areas, to consumers that otherwise might not qualify for service, or at a better price than that offered by a large competitor.

The circumstances surrounding the March 1999 reauction illustrate that the Commission's focus on the small number of bankruptcies as a reason to eliminate eligibility restrictions is misplaced. The most recent C and F Block reauction (March 1999) occurred successfully with DEs making payments as required. The success of the March 1999 reauction likely could be attributed to, in part, the Commission's removal of installment payments, which previously were recognized and have led to unpredictable auction outcomes.

The Commission also should focus on the numerous DEs that already have built out – or are in the process of building out – their networks in accordance with the Commission's construction requirements. Accordingly, any elimination of eligibility requirements would be based on isolated circumstances that markedly vary from the general experiences of DEs. Elimination of eligibility requirements also would result in concentration and warehousing of spectrum by a few carriers at the expense of DEs and consumers.

If the Commission opens the auction to all interested parties, the Commission must adopt new rules, or modify existing rules, to ensure meaningful participation by DEs. Although OPM does not believe that such measures would ensure DE participation, if the Commission removes eligibility restrictions on any of the available licenses, it must (1) preserve 30 MHz spectrum blocks, (2) substantially increase bidding credits to allow DEs to attempt to compete with large, established carriers, and (3) remove existing grandfather provisions. In the alternative, if the Commission reconfigures spectrum into 10 MHz, it must create a combinatorial bidding process to ensure that DEs can obtain sufficient spectrum to create a viable network.

**I. ELIMINATING THE ELIGIBILITY RESTRICTIONS WOULD FRUSTRATE THE PURPOSE OF THE ACT AND WOULD PREVENT DESIGNATED ENTITIES FROM HAVING A MEANINGFUL OPPORTUNITY TO COMPETE.**

**A. Eliminating The Eligibility Restrictions Would Undermine The Statutory Mandate Set Forth In Section 309(j).**

The Commission must maintain the eligibility restrictions for all C and F Block licenses made available in the upcoming auction. As OPM stated in its initial comments, the existing DE eligibility rules form the cornerstone of the Commission's statutory obligation to "ensure that small businesses . . . are given the opportunity to participate in the provision of spectrum-based services."<sup>2</sup> This opportunity is not merely the opportunity to participate in the auction process, but to win spectrum at the auction. To accomplish this Congressional mandate, the Commission specifically reserved C and F Block licenses for small business applicants, recognizing that such companies could not compete effectively against large entities. Removing the eligibility restrictions would frustrate the purpose of section 309(j) of the Act and, in turn, likely lead to significant litigation in the courts thus further delaying the use of the spectrum.

Moreover, removing eligibility restrictions precludes DEs from engaging in meaningful participation in the auction. Several large, entrenched carriers, including VoiceStream Wireless Corporation (“VoiceStream”), BellSouth Corporation (“BellSouth”), and Verizon Wireless (“Verizon”), state that they intend to purchase spectrum at the upcoming auction to complete their national “footprints.”<sup>3</sup> Some of these carriers, however, due to their own poor planning and network implementation – not to the fault of the Commission or the DEs – arguably have exhausted their spectrum. Each of these carriers already has invested substantial resources to develop and implement a viable system. Thus, allowing these large carriers to purchase additional spectrum to maintain their structures would occur at the expense of a potential competitor. The Commission must recognize that these large, established carriers would not walk away from the auction empty-handed and likely would purchase all available spectrum, without leaving any for the DEs.

**B. No Commenter Has Provided Sufficient Justification To Change The Commission’s Rules.**

Obtaining additional spectrum to “fill-in” an existing blueprint does not justify eliminating the eligibility restrictions. As Leap Wireless International, Inc. (“Leap”) commented, in the Commission’s existing PCS allocation, the Commission already accounted for the trend toward regional or national expansion in the provision of CMRS services.<sup>4</sup> As PCIA correctly noted in its comments, the C and F Block licenses were the remainder of the licenses, “those set aside to ensure that there was in fact an opportunity for entrepreneurs to

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<sup>2</sup> Comments of OPM Auction Co. at 3 (quoting 47 U.S.C. § 309(j)(4)(D)).

<sup>3</sup> *See, e.g.*, Comments of BellSouth Corporation at 5; Comments of VoiceStream Wireless Corporation at 4; and Comments of Verizon Wireless at 4.

<sup>4</sup> *See* Further Comments of Leap Wireless International, Inc. at 7.



participate and truly compete in the wireless marketplace.”<sup>5</sup> Large carriers already had an opportunity to bid on 80 MHz of spectrum in previous auctions, and thus, should not be entitled to raid the spectrum set aside for DEs. Moreover, to the extent carriers legitimately are spectrum constrained, spectrum is available through auctions other than those set aside for DEs.

The record demonstrates that DEs are using the spectrum purchased at auction to provide highly desirable services to customers in numerous markets, including major markets. When relying on a handful of bankruptcies of C Block licensees to support their position that the Commission must open the auction, the large carriers blatantly ignore the numerous successful DE operations.

Thus, commenters statements that it is in the best interest of DEs not to purchase spectrum in major markets are without merit. For example, Nextel argues that the eligibility restrictions should be lifted because “licenses in major metropolitan areas, as well as even medium size areas, are ill-suited to successful development by small businesses.”<sup>6</sup> As justification for this erroneous statement, Nextel provides a Declaration that allegedly provides the costs that would be required to construct and operate a wireless system to compete with incumbent providers in major metropolitan areas, for example, Los Angeles.<sup>7</sup> The Declaration, however, has not provided any of the underlying assumptions upon which it relies. The Declaration does not explain the basis of the stated costs (*e.g.*, 3G technology, TDMA technology, or other) nor does it address cell site collocation. Absent discovery of the underlying assumptions, the Declaration is so superficial that it cannot be relied upon.

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<sup>5</sup> See PCIA Comments at 2.

<sup>6</sup> Comments of Nextel Communications, Inc. at 8.

<sup>7</sup> See *id.* at Exhibit 1: Declaration of Michael T. Sicoli.

Additionally, even a review of the limited information provided by Nextel reveals several fundamental flaws. First, Nextel incorrectly assumes that a new entrant would build as many cell sites as an incumbent. There is no support for this proposition. Nor is there any support for Nextel's statement as to the number of cell sites required. In fact, a 30 MHz license, in contrast to 10 MHz, would require significantly fewer cell sites, thus reducing the costs substantially. Second, 30 MHz would require far fewer (if any) capacity cell sites. Third, Nextel's funding requirement is wholly incorrect; since the network infrastructure is the majority of the capital expenditures, the funding requirement could be reduced by as much as fifty percent (50%) utilizing a 30 MHz license. A later entrant to a major market would have substantially reduced build-out costs because numerous towers already would be available for collocation thus reducing construction costs. Lastly, Nextel's reliance on costs realized at auction in the United Kingdom in and of itself questions the reliability of the Declaration. A more appropriate benchmark would be the most recent reauction (March 1999) where the average cost per C Block license was \$3.60 per pop (including a mixture of 15 MHz and 30 MHz licenses). Moreover, even the costs in Chicago, a large market, amounted to only \$14.41 per pop. Accordingly, Nextel's Declaration is wholly unsupported and erroneous and thus must not be given any weight by the Commission.

**II. RECONFIGURING THE 30 MHZ SPECTRUM BLOCKS WOULD PRECLUDE DEs FROM HAVING ANY MEANINGFUL PARTICIPATION IN THE UPCOMING AUCTION.**

As discussed above, eliminating eligibility restrictions for any available license limits a DE's ability to purchase spectrum in the upcoming auction. *In addition, removing the eligibility restrictions and reconfiguring the 30 MHz spectrum blocks into three 10 MHz licenses effectively guarantees that no DE would be able to obtain spectrum sufficient to implement a viable voice and data system.* Thus, the Commission must abandon its proposal to reconfigure

each 30 MHz spectrum block into three 10 MHz licenses. In the alternative, the Commission should reconfigure each 30 MHz spectrum block into a 20 MHz license reserved solely for DEs and a 10 MHz license offered to both DEs and other interested parties.

**A. A 10 MHz Spectrum Block Is Insufficient For Carriers Interested In Building New Systems.**

The record demonstrates that 10 MHz is insufficient for any carrier to build and operate a viable system. For example, Leap, a successful bidder in previous DE auctions that already has begun providing services and has obtained substantial market capitalization, states that 20 MHz of spectrum is necessary to offer combined voice and data services.<sup>8</sup> Even large, established carriers admit that more than 10 MHz is necessary. Specifically, SBC Communications, Inc. (“SBC”) stated that “30 MHz of PCS spectrum is needed to offer a *full complement* of both voice and data wireless services.”<sup>9</sup>

Alpine PCS, Inc. also demonstrated in its comments that acquiring only 10 MHz of spectrum leads to significant spectrum constraints.<sup>10</sup> Alpine presented a telling case-study of a spectrum-constrained carrier: Sprint PCS. In a filing before the Commission, Sprint PCS stated that “in some densely populated markets where Sprint PCS has 10 MHz licenses, it currently uses its entire licensed spectrum and is seeking more spectrum to serve increases in demand.”<sup>11</sup> Sprint PCS further stated “in markets where Sprint PCS experiences high demand for PCS services, it is likely that other licensees will also face high demand, and no suitable

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<sup>8</sup> See Further Comments of Leap Wireless International, Inc. at 14 (stating that “it is *imperative* that Entrepreneurs are provided with continued access to [sic] set aside enough spectrum (20 MHz) to offer combined voice and data services in a significant number of markets.”) (emphasis in original).

<sup>9</sup> Comments of SBC Communications, Inc. on Further Notice of Proposed Rulemaking at 9 (emphasis in original).

<sup>10</sup> See Comments of Alpine PCS, Inc. at 7-10.

spectrum will be available.”<sup>12</sup> As Alpine correctly concluded, the “unintended consequence of the proposed 10 MHz split will be to create one or two handicapped entrepreneurs in a market with only 10 MHz each – companies with limited service offerings who will never be able to offer next generation services.”<sup>13</sup>

**B. Reconfiguring 30 MHz Blocks Into Three 10 MHz Blocks Would Prevent DEs From Competing With Larger Carriers.**

Dividing each 30 MHz spectrum block into three 10 MHz blocks solely would enable large, established carriers to purchase additional spectrum and thus preclude new competitors. Specifically, AT&T Wireless Services, Inc. (“AT&T Wireless”) admits that it supports the Commission’s proposal to divide the spectrum into three 10 MHz blocks, because doing so would facilitate AT&T Wireless’ own participation in the auction. Other commenters, including Verizon Wireless and BellSouth, also admit that they need – or will need in the future – additional spectrum to expand their coverage.<sup>14</sup> These large carriers, however, can purchase only 10 MHz of spectrum, and in some instances 15 MHz, without running afoul of the spectrum cap. These large, established carriers propose reconfiguring the spectrum solely to suit their own needs at the expense of other carriers, in particular of DEs, that are attempting to enter the market anew. None of these established carriers, however, discuss the likely end result of

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<sup>11</sup> See Comments of Alpine PCS, Inc. at 8 n.25 (citation omitted).

<sup>12</sup> *Id.* at 9 (citation omitted).

<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., Comments of BellSouth Corporation at 5 (stating that “there is a critical need for unrestricted spectrum in the larger markets” because “as nationwide or near-nationwide wireless voice and data providers expand their coverage footprints, . . . carriers, such as the pending SBC-BellSouth wireless joint venture, will need spectrum in larger markets.”); Comments of AT&T Wireless Services, Inc. at 5 (stating that additional spectrum is necessary for 3G services); and Comments of Verizon Wireless at 2 (stating that reconfiguring the 30 MHz spectrum will “enable many entities who may not need 30 MHz of spectrum to acquire the amount of spectrum resources that they believe they can put to use.”).

creating three 10 MHz blocks with no eligibility requirements: that each 10 MHz block will be consumed by established carriers desiring to supplement their current spectrum holdings, leaving no spectrum for DEs. Limiting each block to 10 MHz also ensures that no carrier could emerge to offer diverse services and thus compete with carriers already in a particular market.

Moreover, obtaining only 10 MHz would preclude a new entrant from competing with large, established carriers by limiting the amount of growth of the new entrant and by preventing such entrant from being able to offer Third Generation (“3G”) wireless services. The consensus in the industry is that 3G will be the next predominant technology and that present technology should migrate towards it. As several commenters explained, a new entrant must obtain *at least* 20 MHz of spectrum to provide 3G services.<sup>15</sup> Additionally, Verizon Wireless noted that the “development of 3G is premised on access to sufficient spectrum to support spectrum-intensive multimedia services.”<sup>16</sup> In short, in principle, 3G technology requires a minimum allocation of 20 MHz spectrum due to air-interface specifications. For example, the specifications currently under development require 5 MHz carrier-spacing; that is, each carrier must be 5 MHz from the other. The transport band under Third Generation Partnership Project (“3GPP”)<sup>17</sup> is 3.84 mega chips per second (“MCPS”), which operates in each direction. In addition to the transport band, a guardband must exist on each side of the spectrum. Thus, the requirements to establish a 3G system (5 MHz + 5 MHz) do not leave any room for system expansion beyond one paired-band carrier.

The ability to offer 3G services ultimately might be critical to a company’s business plan. Assuming *arguendo* that Nextel’s premise is true, that “a new entrant attempting

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<sup>15</sup> See, e.g., Comments of U.S. AirWaves, Inc. at 5.

<sup>16</sup> Comments of Verizon Wireless at 4.

to differentiate itself and compete with at least five existing providers in a market must build a third generation system that provides voice and high-speed data capabilities . . . ,”<sup>18</sup> Nextel’s own analysis illustrates that 10 MHz is insufficient to develop a 3G system. Thus, it is critical that a new entrant be able to obtain sufficient spectrum not only to meet existing consumer demands, but also to satisfy consumer demands in the near future.

**C. If The Commission Reconfigures The 30 MHz Spectrum, It Must Adopt Bidding Procedures That Enable DEs To Obtain At Least 20 MHz Of Spectrum.**

OPM continues to support the Commission’s tentative conclusion to take bids separately on each license in Auction No. 35 on a simultaneous multiple round basis instead of offering available licenses on Nextel’s proposed “bulk bid” basis. Nextel’s proposal effectively precludes small business bidders from participating in the upcoming auction. As the Commission already has recognized, commenters stated that bulk bidding would significantly decrease participation by both small businesses and large carriers. It would be difficult for small businesses to obtain the necessary financing to win, pay for, and construct the larger systems included in that bulk bid design such as that suggested by Nextel.

If, however, the Commission reconfigures the 30 MHz licenses into three 10 MHz licenses, the Commission must adopt a combinatorial bidding process. In contrast to the bulk bidding process proposed by Nextel, which creates a geographical bidding arrangement, combinatorial bidding permits prospective bidders to bid on combinations or groups of licenses

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<sup>17</sup> 3GPP is a cooperative project by standards organizations and related bodies.

<sup>18</sup> Comments of Nextel Communications, Inc. at Exhibit 1, para 5: Declaration of Michael T. Sicoli. As discussed *supra*, OPM takes issue with several facts and figures contained in Mr. Sicoli’s Declaration.

in a single market and to enter multiple alternative bids within a single bidding round.<sup>19</sup> In other words, adopting a combinatorial bidding process would enable participants to bid on at least two 10 MHz blocks simultaneously (through the use of one bid) without risking that they would be successful on one, but not the other, 10 MHz block. The Commission has recognized that the primary benefit of combinatorial bidding is that bidders can bid on licenses in packages rather than in single units.<sup>20</sup> Absent combinatorial bidding, DEs risk obtaining only one 10 MHz block, which as explained above, would be an insufficient amount of spectrum to create a viable service. Approximately seven years ago, Congress directed the Commission to consider combinatorial bidding processes; to date, the Commission continues to reject such an approach citing the difficulty in administration while noting the large benefits of the approach. The present situation is appropriate for combinatorial bidding.

If the Commission declines to apply combinatorial bidding, it must reserve spectrum blocks solely for DEs no smaller than 20 MHz. Reconfiguring spectrum into 20 MHz and 10 MHz would allow new entrants to purchase sufficient spectrum to create a stand-alone viable system from the 20 MHz blocks as well as would enable existing licensees to obtain the 10 MHz blocks necessary to supplement their current spectrum.

### **III. THE COMMISSION MUST PROVIDE INCREASED BIDDING CREDITS TO DESIGNATED ENTITIES.**

Numerous commenters, including OPM, support the Commission's tentative conclusion that the availability of bidding credits to small and very small businesses should be

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<sup>19</sup> See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, Second Report and Order*, FCC 00-90, para. 102 (rel. Mar. 9, 2000).

<sup>20</sup> See *Service Rules for the 746-674 and 776-794 MHz Bands and Revisions to Part. 27 of the Commission's Rules, First Report and Order*, FCC 00-5, at para. 122 (rel. Jan. 7, 2000).

increased for all auctions whether subject to open or closed bidding.<sup>21</sup> OPM is concerned, however, that the bidding credits proposed would be insufficient to allow DEs to engage in meaningful competition for spectrum against established carriers.<sup>22</sup> In fact, as RTG and OPASTCO recognize, perhaps there is no bidding credit sufficient to allow any DE to compete with a large, established carrier.<sup>23</sup> Several large, established carriers, including AT&T Wireless and Verizon, specifically state that they intend to purchase spectrum in the upcoming auction. AT&T Wireless, for example, is not going to risk the significant investments it already has made in its networks by allowing available spectrum to be purchased by another carrier. Thus, the bidding credits given to DEs must be high enough – if that is even possible – to allow them to compete against larger companies. Commenters arguments that bidding credits should not be increased because existing credits enabled DEs to purchase spectrum in auctions with larger carriers are without merit. The Commission must remember that, even with a bidding credit, any amount paid by a DE is a much larger proportional amount of money to a DE with very limited resources than to a large, established carrier with significant resources.

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<sup>21</sup> See, e.g., OPM comments at 11-12; Comments of Alpine PCS, Inc., at 16 (stating that if the Commission “were to create any ‘open’ eligibility licenses, then entrepreneurs would require bidding credits of at least 25 and 40 percent for small and very small businesses respectively in order for such entities to have any chance to compete.”); Further Comments of Leap Wireless International, Inc. at 19 (stating that bidding credits should be offered in all circumstances to those entities that qualify as small and very small businesses).

<sup>22</sup> See Comments of the Rural Telecommunications Group and the Organization for the Promotion and Advancement of Small Telecommunications Companies at 6 (stating that “a 45 percent bidding credit is scant comfort to a rural carrier that is poised against a nationwide carrier with vast amounts of capital.”).

<sup>23</sup> See *id.*



#### **IV. THE COMMISSION SHOULD REMOVE THE GRANDFATHER EXCEPTION.**

OPM agrees with those commenters that argue that the grandfather exception should be eliminated.<sup>24</sup> Instead, each entity previously classified as a DE that now seeks to participate in an auction set-aside for DEs or to obtain bidding credits must requalify as a DE. As OPM stated in its initial comments, in modifying the eligibility requirements that previously had governed participation in the DE auction, the Commission allowed entities that had been eligible for, and had participated in, the original C Block auction to bid in the reauction regardless of whether they actually had satisfied the eligibility requirements at the time of the reauction.<sup>25</sup> There is no justification to allow such entities to retain their DE status. As illustrated throughout this proceeding, OPM opposes eliminating the eligibility restrictions because DEs cannot compete against large, established carriers with seemingly endless resources to purchase spectrum. Allowing entities that no longer qualify as DEs to participate in the auction as DEs raises the same fundamental issue that is at the core of this proceeding. That is, DEs do not have a meaningful opportunity to participate in the auction against larger carriers, regardless of whether such carrier previously qualified as a DE.

Therefore, as long as a DE remains qualified it should be entitled to utilize reserved spectrum and bidding credits that were designed to encourage small businesses. The moment a DE outgrows its DE designation, however, it must be foreclosed from the benefits designed to assist and encourage participation by DEs.

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<sup>24</sup> See, e.g., Comments of BellSouth Corporation at 10-11; Comments of Verizon Wireless at 15-16.

<sup>25</sup> See Comments of OPM Auction Co. at 10 (citations omitted).

Moreover, proponents of the grandfather exception have cited no arguments to support their position.<sup>26</sup> TeleCorp PCS, Inc. and Tritel Communications, Inc. argue that grandfathering is necessary “to ensure that Entrepreneurs who have abided by the Commission’s rules permitting (and encouraging) normal growth are not now disadvantaged by such actions.”<sup>27</sup> This argument is wholly without merit. Natural growth is reward in and of itself – to say that a company is disadvantaged by growth obscures the purpose of entering into a competitive marketplace. The primary purpose of section 309 of the Act and of the Commission’s rules is to encourage participation by small entities. Having grown past the DE eligibility mark, perhaps due to previous Commission assistance via bidding credits, it is time to permit carriers that currently qualify as DEs to reap similar assistance.

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<sup>26</sup> See, e.g., Comments of the Cellular Telecommunications Industry Association at 3-4 (merely stating that its members support the grandfather exception in its current form without providing any justification).

<sup>27</sup> Comments of TeleCorp PCS, Inc. and Tritel Communications, Inc. at 11.

**CONCLUSION**

For the foregoing reasons, the Commission should retain the current eligibility restrictions for the C and F Block licenses to be offered in the upcoming auction and maintain spectrum in 30 MHz blocks.

Respectfully submitted,

OPM AUCTION CO.

By: David D. Lasier / srf

David D. Lasier  
OPM AUCTION CO.  
6120 Windward Parkway  
Suite 200  
Alpharetta, GA 30005  
(678) 366-9660

June 30, 2000

## **DECLARATION OF SIMON CAVENETT**

I, Simon Cavenett, am Chief Technology Officer of Blue Sky Communications (“Blue Sky”), a US-based PCS communications company. I am responsible for overseeing the technical design, engineering and construction of wireless networks. I have thirteen years of comprehensive experience in wireless system planning, project management, design, deployment, optimization, and operation, and I implemented the first major fixed wireless system in Australia (Telstra) and one of the first commercial CDMA systems in China (Nortel). I hold a B.E. in Electrical Engineering, am a Graduate Member of the Institution of Engineers – Australia (IEAust), and a member of the Institution of Electrical and Electronics Engineers (IEEE) and the CTO Advisory Committee for the GSM Association of North America.

On an international and domestic level, carriers and countries are busily planning the introduction of Third Generation (“3G”) services within the next five years. To remain competitive, it is expected that carriers will seek to implement comparative services and features in their licensed markets. If Designated Entities (“DEs”) are to compete in the marketplace, it is essential that they have the same technological capability to provide these leading-edge services. Technical equality between DEs and Non-Designated Entities cannot be maintained if DEs are relegated to 10 MHz blocks. The minimum license required is 20 MHz (10+10 MHz FDD paired block). Without at least 20 MHz of spectrum, DE carriers will not be able to economically or technically implement or provide the upcoming 3G technologies without significantly increasing technical complexity.

This minimum spectrum allocation of 20 MHz is fundamentally based in the air-interface specifications of the evolving 3G technologies. In simple terms, a 10 MHz license holder will be forced to build far more cell sites than a 30 MHz license holder just to cover the same amount of territory and subscribers. With 3G and utilizing 10 MHz, there is only one carrier, while with 30 MHz, there are at least three carriers. Therefore, as subscribers are added and more capacity is used on the system, a 10 MHz operator MUST add more cell sites. However, the 30 MHz operator could simply add more carriers in lieu of costly additional cell sites. Therefore, PCS licensees with 30 MHz in general do not face the same issues with respect to frequency planning issues for 3G systems and hence currently would have a definite competitive advantage with the ability to rollout and introduce 3G features and services.

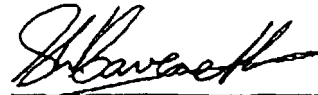
For relative equality between license holders in any market, it is clear that the minimum awarded license block must provide sufficient spectrum to:

- (a) Allow the licensee to provide competitive and marketable services and features at the same relative complexity and cost as all other licensees.
- (b) Not place any technology restrictions on the licensee due to the mandated frequency block awarded that do not equally apply to all other licensees’ frequency blocks for that market.

For these reasons, it is clear that a 10 MHz frequency block in the FCC Broadband PCS Band is not sufficient to meet these criteria. The minimum required is a 20 MHz frequency block.

I hereby declare, under penalty of perjury, that, to the best of my knowledge and belief, the statements contained in the attached letter are true and correct.

Executed on June 30, 2000



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Simon Cavenett  
Chief Technology Officer  
Blue Sky Communications  
6120 Windward Parkway  
Suite 200  
Alpharetta, GA 30005

## CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2000, I served copies of the foregoing, Reply Comments of OPM AUCTION Co. in WT Docket No. 97-82, by hand on the following:

Chairman William Kennard  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-B201H  
Washington, D.C. 20554

Commissioner Susan Ness  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-B115H  
Washington, D.C. 20554

Commissioner Gloria Tristani  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-C302C  
Washington, D.C. 20554


Audrey Bashkin  
Auctions and Industry analysis Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-A302C  
Washington, D.C. 20554

Commissioner Michael Powell  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 8-A204C  
Washington, D.C. 20554

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

International Transcription Services  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

  
Theresa A. Baum